

117TH CONGRESS
1ST SESSION

S. _____

To amend title 11, United States Code, to improve the treatment of student loans in bankruptcy, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. DURBIN (for himself and Mr. CORNYN) introduced the following bill; which was read twice and referred to the Committee on

A BILL

To amend title 11, United States Code, to improve the treatment of student loans in bankruptcy, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fostering Responsible
5 Education Starts with Helping Students Through Ac-
6 countability, Relief, and Taxpayer Protection Through
7 Bankruptcy Act of 2021” or the “FRESH START
8 Through Bankruptcy Act”.

1 **SEC. 2. EXCEPTIONS TO DISCHARGE.**

2 Section 523(a) of title 11, United States code, is
3 amended by striking paragraph (8) and inserting the fol-
4 lowing:

5 “(8) for an educational benefit overpayment or
6 loan made, insured, or guaranteed by a govern-
7 mental unit, or made under any program funded in
8 whole or in part by a governmental unit or nonprofit
9 institution, or for an obligation to repay funds re-
10 ceived as an educational benefit, scholarship, or sti-
11 pend received from a governmental unit or nonprofit
12 institution, unless—

13 “(A) excepting such debt from discharge
14 under this paragraph would impose an undue
15 hardship on the debtor and the debtor’s de-
16 pendents; or

17 “(B) the first payment on such debt be-
18 came due before the 10-year period (exclusive of
19 any applicable suspension of the repayment pe-
20 riod) ending on the date of the filing of the pe-
21 tition;

22 “(8A) unless excepting such debt from dis-
23 charge under this paragraph would impose an undue
24 hardship on the debtor and the debtor’s dependents,
25 for—

1 “(i) is a participant in the Federal Direct
2 Loan Program under part D of title IV of the
3 Higher Education Act of 1965 (20 U.S.C.
4 1087a et seq.); and

5 “(ii) has an enrollment of students that is
6 not less than 33 percent students who have re-
7 ceived a loan made, insured, or guaranteed
8 under title IV of the Higher Education Act of
9 1965 (20 U.S.C. 1070 et seq.).

10 “(C) The term ‘covered student loan’ means the
11 original principal of a loan—

12 “(i) the first payment on which became
13 due before the 10-year period (exclusive of any
14 applicable suspension of the repayment period)
15 ending on the date of the filing of the petition;
16 and

17 “(ii) used by the debtor to make a pay-
18 ment to a covered institution of higher edu-
19 cation on behalf of the debtor for the purpose
20 of attaining an educational benefit.

21 “(D) The term ‘Federal Direct PLUS Loan’
22 means a Federal Direct PLUS Loan under part D
23 of title IV of the Higher Education Act of 1965 (20
24 U.S.C. 1087a et seq.)

1 “(2) If a covered student loan is discharged in a
2 bankruptcy case under this title, the covered institution
3 of higher education to which the debtor of the bankruptcy
4 case made a payment with the covered student loan shall
5 pay to the Department of Education an amount deter-
6 mined in accordance with the following:

7 “(A) An amount equal to 50 percent of the
8 amount of the covered student loan that is dis-
9 charged, if the covered institution of higher edu-
10 cation, on the date on which the first payment on
11 the covered student loan became due—

12 “(i) had a cohort default rate (as deter-
13 mined under section 435(m) of the Higher Edu-
14 cation Act of 1965 (20 U.S.C. 1085(m)) for
15 each of the 3 fiscal years preceding that date
16 that was equal to or more than 25 percent; and

17 “(ii) had a cohort repayment rate—

18 “(I) except for borrowers described in
19 subclause (II), that was equal to or less
20 than 20 percent; and

21 “(II) with respect to borrowers who
22 were graduate or professional students who
23 received a Federal Direct PLUS Loan for
24 enrollment at the institution, that was
25 equal to or less than 35 percent.

1 “(B) An amount equal to 30 percent of the
2 amount of the covered student loan that is dis-
3 charged, if the covered institution of higher edu-
4 cation, on the date on which the first payment on
5 the covered student loan became due—

6 “(i) had a cohort default rate (as deter-
7 mined under section 435(m) of the Higher Edu-
8 cation Act of 1965 (20 U.S.C. 1085(m)) for
9 each of the 3 fiscal years preceding that date
10 that was equal to or more than 20 percent and
11 less than 25 percent; and

12 “(ii) had a cohort repayment rate—

13 “(I) except for borrowers described in
14 subclause (II), that was equal to or less
15 than 25 percent and more than 20 percent;
16 and

17 “(II) with respect to borrowers who
18 were graduate or professional students who
19 received a Federal Direct PLUS Loan for
20 enrollment at the institution, that was
21 equal to or less than 40 percent and more
22 than 35 percent.

23 “(C) An amount equal to 20 percent of the
24 amount of the covered student loan that is dis-
25 charged, if the covered institution of higher edu-

1 cation, on the date on which the first payment on
2 the covered student loan became due—

3 “(i) had a cohort default rate (as deter-
4 mined under section 435(m) of the Higher Edu-
5 cation Act of 1965 (20 U.S.C. 1085(m)) for
6 each of the 3 fiscal years preceding that date
7 that was equal to or more than 15 percent and
8 less than 20 percent; and

9 “(ii) had a cohort repayment rate—

10 “(I) except for borrowers described in
11 subclause (II), that was equal to or less
12 than 30 percent and more than 25 percent;
13 and

14 “(II) with respect to borrowers who
15 were graduate or professional students who
16 received a Federal Direct PLUS Loan for
17 enrollment at the institution, that was
18 equal to or less than 45 percent and more
19 than 40 percent.”.

20 **SEC. 4. EFFECTIVE DATE; APPLICABILITY.**

21 This Act and the amendments made by this Act
22 shall—

23 (1) take effect on the date that is 180 days
24 after the date of enactment of this Act; and

1 (2) apply to a petition filed or amended under
2 this title on or after the effective date under para-
3 graph (1) with respect to a debt for an educational
4 benefit, overpayment, loan, scholarship, or stipend of
5 a debtor.